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SUPREME COURT OF THE UNITED STATES.

No. 241.

FANNY A. HUNTINGTON, ADMINISTRATRIX, AND FRANK H. GASSAWAY, ADMINISTRATOR, OF W. S. HUNTINGTON, DECEASED, APPELLANTS,

vs.

THE NATIONAL SAVINGS BANK OF THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 16, 1875.

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1 Proceedings before the supreme court of the District of Columbia, sitting in general term, commencing on the first Monday, 5th day of January, 1875.

And now on this 10th day of April, 1874, the plaintiff filed the following bill in equity, in these words:

In the supreme court of the District of Columbia the 10th day of February, A. D. 1874. Bill of equity.

BETWEEN FANNY A. HUNTINGTON AND FRANK H. Gassaway, adm'rs of W. S. Huntington, *and* THE NATIONAL SAVINGS-BANK OF THE District of Columbia. } No. 3687.

I. The plaintiffs say that they are citizens of the District of Columbia, and that the plaintiff is a corporation of the District of Co-
2 lumbia; that its place of business is in the District of Columbia, and that William Stickney is its president.

II. The plaintiffs say that they sue as administrators of William S. Huntington, who was one of the corporators, as well as in behalf of any other of said corporators or other parties interested who shall come in and make themselves parties and contribute towards the expenses of this suit, and they sue the defendant as a corporation representing all the stockholders and creditors of said corporation, which is a bank, and owns all the interest of said bank.

III. The plaintiffs say that heretofore, to wit, on the 24th day of May, 1870, Congress, by a law of that date, declared that "George H. Plant, William S. Huntington, Lewis Clephane, H. A. Willard, George W. Adams, S. P. Brown, William Stickney, B. P. Snyder, A. L. Sturtavant, J. H. Lathrop, Nathaniel Wilson, R. W. Mussey, Zenas C. Robbins, William B. Todd, Edward Simms, Joseph Casey, James M. Latta, Henry Willard, William H. Philip, Alexander R. Shepherd, William P. Dole, Hugh McCulloch, and Mathew G. Emery are hereby created, and their successors and assigns shall be, and they are hereby declared to
3 be, a body politic and corporate, by the name and style of the National-Savings Bank of the District of Columbia, and by that name shall have succession, and be capable in law to sue and be sued, plead and be pleaded, answer and be answered, defend and be defended in all courts of law and equity, and elsewhere; to make and to use a common seal, and the same to *answer* or renew at pleasure; and generally to do and perform all things relative to the object of this institution which is now or shall be lawful for any individual or body politic or corporate to do." Section 2 of the act declared what officers should transact the business of the corporation; other sections provided for annual meetings for the election of officers; for receiving and investing deposits; for loans and the general business of the corporation; for restrictions upon the officers as to borrowing; for security by subordinate officers; for the meeting of the corporators and an organization; for annual reports to Congress; for inspection by the Comptroller of the Currency or depositors; for the making of by-laws, contracts, deeds, and suits; for filing bond by said corporation, with security, with the clerk of the supreme court of the District of Columbia, to be approved by one of the judges of said court, and for the right of repeal by
4 Congress; all of which will more fully and at large appear by

reference to a copy in print of said charter, hereto annexed, and prayed to be taken as a part of the plaintiffs' bill, the same being marked "Exhibit A."

IV. The plaintiffs' say that very soon after the date of said act sixteen the corporators in said act mentioned, of whom said Huntington was one, met and organized as contemplated by section 7 of said act by electing a president, a vice-president, a secretary, and a treasurer, and a board of managers of nine members, who at present are Henry Willard, William Stickney, Joseph Casey, Lewis Clephane, S. P. Brown, George H. Plant, Mathew G. Emery, J. H. Lathrop, and William H. Philip; that said corporation being thus organized as contemplated by section II of the act, it filed a bond with the clerk of the supreme court of the District of Columbia, which was duly approved by one of the judges of said court, payable to the United States, in the penal sum of two hundred thousand dollars, conditioned as required by said
5 section; that said bond still remains on file with said clerk unchanged, no new bond or security ever having been required by said court.

V. The plaintiffs' say that no capital was ever paid into said bank by any of said corporators, except enough to organize, furnish, and start the business; and these advances they are advised were borne equally; that said bank immediately commenced business as a bank, as contemplated by said charter; that it has done a large business for now nearly four years, never sustaining any considerable losses; that it has never issued stock or divided out shares; and therefore all its profits and the present value of its capital belong to its sixteen corporators, enumerated in the first section of its charter, and hereinbefore named; that those profits and the capital stock and the franchise are now of great value, to wit, of the value of half a million of dollars, or some other such large sum.

VI. The plaintiffs say that neither William S. Huntington in his lifetime, nor the said plaintiffs since his death, has or have ever received more than about three thousand dollars of dividends or *or* profits
6 of said bank; that it has refused to recognize their rights within; that they have been advised, believe, and charge that the other corporators have received larger dividends; that they have given out and pretend that upon the death of said William S. Huntington all the rights in said business and franchises survive to the other corporators, and that as expressive of their views, and to injure said plaintiffs, long since the death of said William S. Huntington, the said defendant has published a bye law, which will be found on pages 18 and 19 of said Exhibit A. The plaintiffs are advised and believe that the proposition as to the character and liability of the securities on the bond is unsound in law, and the right which the defendants claim is inadmissible in equity; that the securities on the bond are securities of the corporation, and not of each other; that they could as well have been strangers as corporators, and corporators or their respective assignees as strangers; that the liability of each and all continues until a new bond is demanded and given as required by law; that the right of the surviving members to choose the successor of the deceased mem-
7 ber is an assumption wholly unsupported by law; that it is treating the corporation as a commercial partnership, which would give to each and every member the right to dissolve it; and which would be ipso facto dissolved by the death of any member; and if that is the legal state of the case, the plaintiffs say that they demand that the partnership be wound up and a division of the assets be made.

VII. The plaintiffs say that they have exhausted all reasonable means of settling this matter with the defendant. They have offered to relinquish the interest of the plaintiffs to the bank, or to any person whom it might name. They have proposed to sell the interest of the estate to John Van Riswick, a citizen of character and large means, who agreed to purchase if the defendant would admit his rights in the place of Huntington, by furnishing a corresponding bond. This proposition they dallied over, and finally indefinitely postponed. They have endeavored to get an account of the value of the interest, but this has been answered in such a way as, if true, it would destroy the credit of the institu-
8 tion before the public. Therefore, in justice to all concerned, the plaintiffs assume that the undervaluation is not warranted by the true state of the business.

VIII. The plaintiffs say that the situation of the estate of their intestate is such as to require a settlement of his interest, and it cannot be longer pos'poned.

IX. The premises considered, the plaintiffs pray that the defendant be cited and required to answer this bill under oath of its president as fully as if here again repeated and he were thereto interrogated, and particularly that he set forth and show an account-current of said bank since its organization, showing its receipts, expenditures, and profits ever since its organization, and its exact standing at every period of six months of its existence. That it show what dividends have been paid to any and what corporators, and why was none other than above mentioned paid to the plaintiffs.

X. That the franchises, property, and privileges be valued, and that the defendant be decreed to pay the plaintiffs one-sixteenth part thereof, or else that there be a decree that the same may be sold in mar-
9 ket overt, or, if none appropriate, that the corporation, with all its franchises, be sold, with the privilege of re-organization by the purchase's; that the plaintiffs recover their costs and have such general eral and special relief as they shall show themselves equitable entitled to.

GEO. W. PASCHAL,
Sol'r for Plaintiff.

10 EXHIBIT A.

Charter and by-laws of the National Savings-Bank of the District of Columbia, chartered by Congress May 24, 1870.

OFFICERS.

President.—William Stickney.
Vice-president.—Lewis Clephane.
Secretary.—Matthew G. Emery.
Treasurer.—B. P. Snyder.
Board of managers.—Henry A. Willard, William Stickney, Hon. Joseph Casey, Lewis Clephane, S. P. Brown, Geo. H. Plant, M. G. Emery, J. H. Lathrop, W'm H. Philip.

CHARTER.

An act to incorporate the National Union Savings-Bank of the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That George H.

Plant, William S. Huntington, Lewis Clephane, H. A. Willard, George W. Adams, S. P. Brown, W'm Stickney, B. P. Snyder, A. L. Sturtavant, J. H. Lathrop, Nathaniel Wilson, R. D. Mussey, Zenas C. Robbins, William B. Todd, Edward Simms, Joseph Casey, James M. Latta, Henry Willard, William H. Philip, Alexander R. Shepherd, William P. Dole, Hugh McCulloch, and Matthew G. Emery are hereby created, and their successors and assigns shall be, and they are hereby declared to be, a body politic and corporate, by the name and style of the National Savings Bank of the District of Columbia, and by that name shall have succession, and be capable in law to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts of law and equity, and elsewhere; to make and to use a common seal, and the same to alter or renew at pleasure; and generally to do and perform all things relative to the object of this institution which is now or shall be lawful for any individual or body politic or corporate to do.

SEC. 2. And be it further enacted, That the officers of said corporation shall consist of a president and vice president, who, together with seven trustees, shall constitute a board of managers, four of whom, if the president or vice-president be present, shall constitute a legal meeting of such board for the transaction of business.

SEC. 3. And be it further enacted, That said corporation shall meet annually in the month of April, and as much oftener as they may judge expedient, and any seven members of said corporation, the president, secretary, or treasurer being one, shall be a quorum, and the said corporation at their annual meeting shall have power to elect a president and a treasurer, who shall give bond in the sum of ten thousand dollars for the faithful discharge of the duties of his office, and all such other officers as may be deemed necessary; which officers shall continue in office one year, and until others are chosen in their stead; and all officers so chosen shall be under oath to the faithful discharge of the duties of their offices, respectively.

SEC. 4. And be it further enacted, That said corporation may receive on deposit for the use and benefit of the depositors all sums of money offered for that purpose. All such sums may be invested in the stock of any bank incorporated by Congress, or may be loaned on interest to any such bank, or may be loaned on bonds or notes, with collateral security of the stock of such banks at not more than ninety per centum of its par value, or they may be invested at [in] the public funds of the United States, of the several States, or loaned on a pledge of any of said funds, or invested in loans on mortgages of real estate: Provided, That the whole amount of stock held by the institution at one time in any one bank, both by way of an investment and as a surety for loans, shall not exceed one-half of the capital stock of such bank, and that not more than three-quarters of the whole sum deposited in the institution shall be at any one time invested in mortgages of real estate. The income or interest of all deposits shall be divided among the depositors, or their legal representatives, according to the terms of interest stipulated; and the principal may be withdrawn at such times or in such manner as the corporation shall in its by-laws direct.

SEC. 5. And be it further enacted, That no officer, director, or committee, charged with the duty of investing the deposits, shall borrow any portion thereof, or use the same, except in payment of the expenses of the corporation; and if any officer, director, agent, or other person connected with said bank, and interested with the funds or deposits thereof, shall embezzle or fraudulently convert the same to his own use, he shall be deemed guilty of larceny, and shall, on conviction thereof by any

court competent to try the offence, be imprisoned in the penitentiary not less than one nor more than ten years.

SEC. 6. And be it further enacted, That the subordinate officers and agents of said corporation shall respectively give such security for their fidelity and good conduct as the board of managers may from time to time require, and said board shall fix the salaries of such officers and agents.

SEC. 7. And be it further enacted, That the persons named as corporators in the first section of this act shall be authorized to meet and organize said bank by the election of one of their number as president, and one as vice-president, and thereupon shall proceed to elect such persons as they shall select, to be added to their board of managers, so that the whole number of trustees or managers, including the president and vice-president, shall not exceed nine persons.

SEC. 8. And be it further enacted, That this corporation shall make an annual report to Congress of their funds and investments. Said returns shall specify the following particulars, namely: The number of depositors; total amount of deposits; amount invested in bank-stock and deposited in bank on interest; amount secured by bank-stock; amount invested in public funds; loans on security of public funds; loans on mortgage of real estate; loans on personal securities; amount of cash on hand; total dividends of the year; annual expenses of the institution; all of which shall be certified and sworn to by the treasurer; and five or more of the managers shall also certify and make oath that the said return is correct according to their best knowledge and belief.

SEC. 9. And be it further enacted, That the books of said corporation shall, at all times during their hours of business, be open for inspection and examination to the Comptroller of the Currency or depositors.

SEC. 10. And be it further enacted, That said corporation may make by-laws for the more orderly management of their business, not repugnant to law; may have a common seal, which they may change at pleasure; that all deeds, grants, covenants, and agreements, made by their treasurer, or any other person by their authority, shall be good and valid; and said corporation shall have power to sue and may be sued, defend and be held to answer, by the name aforesaid.

SEC. 11. And be it further enacted, That the said corporation shall file a bond, with security, with the clerk of the supreme court of the District, to be approved by one of the judges of th esaid court, to the United States, in the penal sum of two hundred thousand dollars, with a condition to pay and to satisty to every depositor or person entitled such sum as the party may be entitled to, within thirty days after such deposit shall be demanded; and which bond may be sued by any depositor or person entitled after such demand and refusal to pay; and that the said supreme court shall have power to require a new bond, and new security, at any time they may deem it necessary for the intesest of parties interested.

SEC. 12. And be it further enacted, That Congress shall, at all times, possess the power to alter, amend, or repeal this act.

Approved May 24, 1870.

By-laws of the National Savings-Bank of the District of Columbia.

SECTION I.—*Annual meetings.*

The annual meetings of this corporation shall be held at twelve o'clock, noon, at their office in the city of Washington, on the second Monday in April in each year.

SECTION II.—*Officers.*

The officers of said corporation shall consist of a president, vice-president, secretary, treasurer, and seven trustees, who, with the exception of the treasurer, shall constitute the board of managers or directors; all of whom shall be elected annually by the corporators, by ballot, and hold their offices till their successors are elected and qualified; four of whom, if the president or vice-president be present, shall constitute a legal meeting of such board for the transaction of business.

SECTION III.—*Officers' obligation.*

All officers shall be under oath for the faithful discharge of the duties of their offices, respectively.

The treasurer shall give bond in the sum of not less than ten thousand dollars for the faithful discharge of the duties of his office. All other officers and agents shall, respectively, give such bond or security for their fidelity and good conduct as the board of managers may from time to time require.

SECTION IV.—*Committees.*

There shall be elected annually, by ballot, a committee of investment, consisting of the president and four members of the board of managers; a committee of appraisers, consisting of three members of the corporation; a committee of examiners, consisting of three corporators, other than officers.

SECTION V.—*Duties of the president.*

The president shall preside at all meetings of the corporation, the board of managers, and committee of investment. He shall have the custody of the corporate seal, and shall be in daily attendance, and have a general supervision and control of the affairs of the corporation.

SECTION VI.—*Duties of the vice-president.*

The vice-president shall, in case of the absence, inability, death, or resignation of the president, perform the duties of the president until the next meeting of the corporation, or until the president shall return to his post or his successor shall be elected.

SECTION VII.—*Secretary's duties.*

The secretary shall call meetings of the corporation and all meetings of the board of managers, either by personal notice or by notice through the post-office, and shall keep a faithful record of the proceedings of the corporation and of the board of managers. He shall record the names of the members present at each meeting of the board of managers or of the corporation, and at the request of any three corporators shall call special meetings of the corporation.

SECTION VIII.—*Treasurer's duties.*

The treasurer shall receive, have the charge of, and pay out the moneys deposited, and shall keep all the securities and other evidences of property belonging to the institution, in such manner as shall be prescribed by the board of managers. All moneys received by him, except

so much as the committee of investment shall deem requisite to reserve for daily use, shall be deposited in such bank or banks or other moneyed institutions as the board of managers shall appoint, in the name and to the credit of the "National Savings-Bank of the District of Columbia," subject to his drafts, countersigned by the president or acting president.

He shall make up his accounts and render a semi-annual report thereof, together with a correct statement of the securities held by the bank or by him as treasurer, to the board of managers, in the months of January and July, or whenever requested by a majority of the board of managers, and shall receive, if he request it, a certificate for his justification. He shall call special meetings of the committee of investment when requested so to do by any member thereof, and his books shall be open for the inspection of the corporators, individually or as a body.

He shall also perform all such other duties as may be required of him by the board of managers.

SECTION IX.—*Duties of the board of managers.*

The board of managers shall meet at 11 o'clock a. m. the second Monday in each month.

They shall have the general management of the institution, give directions as to the deposits and the mode of keeping the books, and shall supervise and control the action of the committees of investment and appraisement, appoint all subordinate agents or clerks, and fix their compensation, and no securities belonging to the bank shall be sold or transferred unless by their authority.

They shall also have power to fill any vacancy in the office of treasurer or secretary until the next meeting of the corporation.

SECTION X.—*Duties of the committee of investment.*

It shall be the duty of the committee of investment to exercise a general supervision of all funds, securities, and property of the bank, to direct as to the loan or investment of its funds. No loans shall be made except as authorized by a vote of the committee, duly recorded, in which at least three members of the committee shall concur; the evidence of such consent shall be by the word "approved," verified by the initials of the chairman of the committee.

No member of the committee shall borrow any portion of the funds of the bank, or use the same, except in payment of the expenses of the corporation.

They may authorize the treasurer to borrow money when the interest of the institution may require it.

They may authorize the treasurer to collect, by suit or otherwise, any sums due.

The meeting of the committee shall be at least once in each week, and as much oftener as the interests of the bank may require.

Three members shall constitute a quorum.

They shall keep a regular record of their proceedings, which shall be open for the inspection of any of the corporators.

They may make such further rules for their own government as may be advisable, not inconsistent with the charter and these by-laws, subject, however, to be annulled by a vote of a majority of the board of managers.

SECTION XI.—*Duties of appraisement committee.*

It shall be their duty to appraise the value of all real property upon which applications are made for loans, and such application shall bear the written estimate of at least one of said committee before it is submitted to the committee of investment.

SECTION XII.—*Duties of committee of examiners.*

It shall be the duty of the committee of examiners, as often as they deem it expedient, but at least twice in each year, to examine carefully all the books, accounts, securities, cash, and business of the bank, and report in writing thereon at the next meeting of the board of managers, which report shall be entered in a book to be kept specially for that purpose. Their semi-annual examinations shall be made in the months of March and September.

SECTION XIII.—*Deposits.*

The smallest deposit shall be one dime; the lowest sum which shall be put on interest shall be one dollar, and the highest sum one thousand dollars, except as hereinafter provided.

The deposits shall be entered in the books of the corporation, and a book shall be given to each depositor, in which the sums paid shall be entered as a voucher. All depositors or their agents on making their first deposits shall be required to subscribe to the by-laws of the corporation as evidence of his or her assent to all the regulations of the bank. All money, either deposited or paid out, shall be current money of the United States or its equivalent. Special deposits exceeding the sum of $1,000 may be received at special rates of interest and stated time of withdrawal.

Any depositor may designate, at the time of making his or her deposit, the period for which it is desired the same shall remain in the bank, and the person for whose benefit it is made; and such depositor and his or her legal representatives shall be bound by such condition, by him or her voluntarily annexed to such deposit; and the same shall be paid to such person as shall be legally entitled to receive it.

SECTION XIV.—*Mode of withdrawing funds and receiving interest.*

Interest may be received personally or upon the written order of the depositor. Money deposited may be drawn out by the depositor, or by some person legally authorized, but the corporation reserve the right to refuse to pay either principal or interest without the depositor produces the original book, that each payment may be entered therein, unless it is proved, to the satisfaction of the board of managers or treasurer, that such book shall have been stolen, lost, or destroyed, in which case a legal discharge shall be given. This corporation will not be responsible for loss sustained where a depositor has not given notice of his or her book having been stolen or lost, if the deposit evidenced by such book shall have been paid in whole or in part on presentation of such book. Money can be withdrawn by depositors on demand, but the corporation may require written notice, not exceeding thirty days, of intention to withdraw.

No sum less than one dollar (except it be accrued interest) shall be withdrawn, unless in settlement of the account of any depositor.

SECTION X*V*.—*Interest.*

Interest shall be declared on the first days of January and July in each year, and be payable on the third Wednesday of said months, upon all sums of one dollar or more, (excepting special deposits, as provided for in Section XIII.) which have been deposited for the space of six months next preceding; and a proportionate rate of interest shall be paid on any like sum which shall have been deposited for the space of one or more full calendar months. But no interest will be allowed for a fractional part of a month in any case.

Until otherwise ordered, interest allowed upon deposits, except in the case of special deposits, shall be such as may be declared from time to time by the board of managers, but not to be less than 5 per cent.

The interest accrued and declared to the credit of the depositors on the first day of January and July shall be added to the principal from those dates respectively, and draw interest as an original deposit.

SECTION XVI.—*Notes, deeds of conveyance, mortgages, &c.*

All notes, mortgages, or other securities shall be given to the bank in its corporate name, and shall be released or assigned on payment of all indebtedness for which they are held as security upon the written order of the president, attested by the treasurer, or whenever so directed by the committee of investment, a report of which shall be submitted at the next stated meeting of the committee of investment.

All deeds of conveyance or other legal documents shall be signed by the president, or acting president, and treasurer.

SECTION XVII.—*Membership.*

This corporation having filed a bond for the security of its depositors and all others interested, as required by the charter, the sureties therein composed of all the corporators named in the charter or their assigns respectively accepting the charter, the said obligors being bound as between themselves to contribute equally to meet whatever losses, if any, which may fall upon the company, without which the company could never have been organized; and since the liability of any member for that of his estate must cease at his death, so far as relates to future losses, in consequence whereof the burthen of responsibility would accumulate from time to time upon the surviving members; and inasmuch as the charter confers upon the company no authority to issue stock or certificates of shares, as is the case with trading or banking corporations, it is therefore hereby declared and enacted that upon the death of any member, his successor, if any, is to be chosen by the surviving members, who shall be required to enter into a like obligation as that by which the other members are bound.

For the reasons given in the preceding by-law, it is further declared and enacted that the bankruptcy or notorious insolvency of any member shall be good ground of disfranchisement. But in the case of insolvency, the member shall have the right to continue his connection with the company, provided he shall file with the clerk of the supreme court of the District of Columbia a new bond, with one or more sureties, to be approved as the former bond, and of the same obligation and effect as that bond.

On the termination of any member's connection with the company, his share of the property and profits of the company shall be paid over to the parties lawfully entitled to receive the same.

SECTION XVIII.—*Assignments.*

Any member of the corporation desiring to assign his interest in the same may do so, but the person to whom the assignment is made shall not be considered a member of the corporation until he is regularly elected by a vote of the majority of the corporators, and filed the necessary security, as in other cases of change of membership: Provided, That should the assignment be made to any member of the corporation, said corporator shall not be entitled to an additional vote in the corporation in consequence of said assignment.

SECTION XIX.—*Amendment of by-laws.*

These by-laws may be amended and others added at any stated or adjourned stated meeting of the corporators, provided notice thereof be entered on the record of proceedings at the preceding stated meeting or adjourned stated meeting, and notice of the proposed amendment in writing be sent to each corporator.

11 And now, on this 14th day of April, A. D. 1874, the defendant filed its answer as follows, viz:

1st. It admits the averments of paragraph No. 1.

2nd. It admits that the plaintiffs are administrators of W'm S. Huntington, who was one of the corporators by whom the defendant was organized as a corporation.

3rd. It admits the incorporation of the defendant, by an act of Congress, as alleged and as shown in the exhibit filed with the bill.

4th. It admits that the sixteen persons referred to met and organized by the election of officers, and that the board of managers are correctly named, and that a bond was executed by defendant, in compliance with the requirements of the charter, as alleged.

5th. It is true, as alleged in the bill, that no capital was paid into said bank by any of the corporators at the time of such organization, nor has any since been paid. It is further true that said bank commenced business by receiving deposits on interest and loaning the money so received at a higher rate of interest, and has continued

12 said business for nearly four years, but not without considerable loss, as hereinafter shown. It is further true that the defendant has never issued stock, because its charter does not authorize it to issue capital stock, which would be the representative of the interests of its several members and would be transferable and transmissible, nor is there any property or capital to be represented by such stock. Such profits as were realized were the property of the individuals who organized under the charter aforesaid; but the defendant shews that said profits were not realized by the employment of any capital of the defendant, but by the personal credit and attention of the several corporators, in the employment of the funds of their customers; that, in point of fact, there is no capital; that upon an account of profit and loss, it will appear that the losses more than absorb the profits even up the present time, and that there is no franchise, as defendant is advised, of an appreciable marketable value, and consequently it denies that said alleged profits, capital stock, and franchise are *a* great value.

13 6th. No division of profits was made among the corporators until after July, 1873, and after the death of said W'm S. Huntington, and the amount so divided had to be refunded by the surviving corporators, in order to meet a large loss incurred in the sacrifice of

securities to meet pressing demands occasioned by the recent financial panic. In the mean time there had been paid to the said plaintiffs the said W'm S. Huntington's estimated share of said profits up to the time of his death, in March, 1872.

Defendant admits that it does not recognize any continuing interest in its business in the estate of said W'm S. Huntington since his death, while it does admit his right to a full share of all profits accruing up to the date of his death, and the right of his representatives to an account of said profits, which account defendant has never refused to render. It is true that defendant adopted a bye-law as alleged; but it was designed to define the relations of its members in the future, as well as to express their views of existing rights, but not in any way to
14 injure the complainants; nor was it passed with any pretension to conclude thereby any rights that has accrued.

It submits, however, that its organization is to all intents and purposes an incorporated partnership; that it' charter does not contemplate any other business than such as must be conducted through the personal credit and exertions of the members, nor confer the right upon any one of them to obtrude upon the others, in his place, a stranger who might be without credit or respo'sibility; and that the only franchise conveyed in the charter of incorporation is the privilege, personal to the parties named, of conducting business together in a corporate capacity, instead of as individuals, with the power, perhaps, of transferring their joint or several interests by common consent; but that upon the death of any member, inasmuch as the survivors lose the benefit of his credit and personal services, and inasmuch he has paid in no capital, there is no consideration or ground for and upon which the earnings acquired through the personal exertions of the survivors, and without either his labor or means, should *a*nure to the benefit of his estate.

15 Defendant*s* further says it admits that the corporators signing the bond aforesaid were sureties of the corporation and not of each other, and might have been strangers as well as corporators; in other words, that they did not execute said bond as corporators, and said bond was not capital, nor was its execution by the corporators required by the charter or by-laws, nor was it the consideration of the relations of the parties inter *se*'e: and even if it were, as far as said Huntington's estate is concerned, they claim that such consideration would have failed, in consequence of the condition of his estate, which, they are informed and believe, is much embarrassed, if not wholly insolvent, and therefore unable to respond in aid of the other corporators against liabilities and claims.

7th. It admits that the propositions referred to were made. They were considered deliberately, because it was not known to defendant*s* without legal advice what rights the estate of said Huntington might have in the premises, and they were substantially rejected, by
16 being postponed as alleged, because, upon consideration, the defendant became satisfied that its rights and its relations to the estate of said Huntington were as hereinbefore stated. It could give no account of the value of an interest which had expired, but defendant denies that it has refused to account for profits or earnings realized before said Huntington's death.

8. If the legal effect of treating the defendant as an incorporated partnership, as aforesaid, should be that the corporation must be dissolved, defendant is willing that such dissolution should take place, and would prefer it to a condition of things under which the surviving cor-

porators must devote their labor and credit in part to the aid of an estate from which they receive nothing in return. Defendant files herewith in response to the bill a statement showing its condition at different periods and its receipts and expenditures, marked "Defendant's Exhibit A."

{NATIONAL SAVINGS BANK OF THE DISTRICT OF COLUMBIA. SEAL.}

WALTER S. COX, *Sol'r.*
WILLIAM STICKNEY,
President of the National Savings-Bank of the District of Columbia.

17 DEFENDANT'S EXHIBIT A.

Statement of the condition of the National Savings-Bank of the District of Columbia at periods named.

Dates.	Assets.	Liabilities.	Profit.	Loss.
July 1, 1871	144,226 96	144,554 55	.....	327 59
Jan. 1, 1872	290,962 47	288,933 33	2,029 14	.....
July 1, 1872	427,921 52	421,073 18	6,848 34	.....
Jan. 1, 1873	517,451 41	508,928 83	8,522 58	.....
July 1, 1873	704,166 27	689,773 99	14,392 28	.....
Jan. 1, 1874	375,466 96	378,837 96	.....	83,371

No division of profits having been made until after July 1, 1873, (and that dividend having been refunded prior to July 1, 1874,) it will be noticed that the net loss during the entire period has been $83,371.

18 *Total receipts, expenditures, and profits to January* 1, 1874.

Total amount received in the way of income, including interest received, as well as interest accrued to Jan'y 1, 1874.	102,080 47
Total amount paid for current expenses, U. S. int. rev. tax, interest paid or credited depositors, and $277.42 (profits to Apr. 1, 1872) paid F. H. Gassaway, adm'r, Oct. 11, 1873..	103,891 38
Loss.....	*1,810 91

And now, on this 29th day of May, 1874, came the plaintiffs and filed their bill of replication, as follows:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiences of said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that

* The discrepancy between the loss as shown by this statement and that shown by statement of "assets and liabilities" is accounted for by $1,560.09 U. S. internal-revenue tax accrued prior to July 1, 1874, but not paid till Jan. 16.

In August, 1873, $10,794.45, being 75 per cent. of the profits, was divided among the corporators of this bank, viz: Andrew Wylie, William Stickney, Lewis Clephane, S. P. Brown, Mathew G. Emery, Zenas C. Robbins, Wm. H. Philp, B. P. Snyder, Joseph Casey, George H. Plant, A. L. Stuyvesant, H. A. Willard, Alex. R. Shepherd, James M. Latta, and J. H. Lathrop.

19 December 5, 1873, an assessment of the same amount was made against the corporators in order to cover losses in converting securities during the recent panic.

(These amounts are not included in the statement of receipts, expenditures, and profits.)

said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this replaint is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

GEO. W. PASCHAL,
For Plaintiffs.

20 And now, on this 18th day of June, A. D. 1874, comes the defendant and files his amended statement, as follows, viz:

Statement of salaries paid to officers and employees of the National Savings-Bank from opening of the bank to January 1, 1874.

W'm Stickney, vice-pres., acting pres., for Feb., M'ch, & Apr., 1872, @ $600 per annum	150	
Do., president, from May 1, '72, to Jan'ry 1, '74, @ $1,200 per annum	2,000	
		2,150
B. P. Snyder, treas., Feb. 1, '70, to June 30, '72, @ $600 per annum	850	
Do., do., July 1, '72, to Jan'y 1, '74, @ $1,000 per annum	1,500	
		2,350
Geo. H. Plant, chairman of appraisement com., @ $1,200 per annum, from April 1, 1873, when salary ceased		500
Tho's C. Pearsall, teller, Aug., Sept., & Oct., 1871, @ $1,500 per annum	375	
Do., do., Nov. 1, '71, to Jan. 1, '74, @ $1,600 per annum	3,466 66	
		3,841 66
T. R. Jones, bookkeeper, M'ch 11, '72, to Jan. 1, '73, @ $1,200 per annum	967 74	
Do., do., Jan. 1, '73, to Jan. 1, '74, @ $1,600 per annum	1,600	
		2,567 74
Messenger, Feb. 1, '70, to June 30, '73, @ $10 per month, and July 1, '73, to Jan. 1, '74, @ $15 per mo.		370
J. L. Sikken, temporary clerk, Nov., '71, to M'ch, '72, @ $15 per week		215
Total salaries		11,994 40

21 SATURDAY, *March* 6, 1875.

FANNY A. HUNTINGTON AND FRANK H. GASSAWAY, admr. of W. S. Huntington, comp'ts,
vs.
THE NATIONAL SAVINGS-BANK OF THE DISTRICT of Columbia, defendants.

This case having been heard upon the record of the special term, ordered by said special term unto this court, to be heard here in the first instance, and upon argument of counsel on both sides, it is there-

upon, this 6th day of March, 1875, ordered, adjudged, and decided that the bill of complaint be, and the same is hereby, dismissed with costs.

27 And now, on this 25th day of March, A. D. 1875, comes the plaintiffs and files their order of appeal, as follows, viz:

The above-named plaintiffs, conceiving themselves aggrieved by the final decree entered on or about the 6th day of March, 1875, in the above entitled cause, do hereby appeal therefrom, and from each and every part thereof, to the Supreme Court of the United States; and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to said Supreme Court.

Dated at Washington this 25th day of March, 1875.

Appeal allowed.
March 25th, 1875.

D. K. CARTTER,
Ch'f Just.

Clerk's certificate.

CLERK'S OFFICE.
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 1st day of October, 1875.

SEAL. R. J. MEIGS, *Clerk*,
By R. J. MEIGS, Jr.,
Assistant Clerk.

Indorsed: Record on appeal. No. 211. Francis A. Huntington, admr's, and Frank H. Causeway, admr's, of Wm. H. Huntington, deceased, appellants, vs. The National Savings Bank of the District of Columbia. Court of Claims. Filed 16th October, 1875.

Supreme Court of the United States.

OCTOBER TERM, 1877.

HUNTINGTON'S ADMINISTRATORS,

vs.

NATIONAL SAVINGS BANK.

No. 241.

This case comes on appeal from the Supreme Court of the District of Columbia, in Equity.

The appellees set up that their intestate, William S. Huntington, in his lifetime, with fifteen other persons who are named in the bill, were incorporated by an act of Congress of 24th May, 1870 (set out in the record, pp. 3, 4 and 5), under the name of the National Savings Bank of the District of Columbia, and capable in law of suing and being sued, &c., with power to receive on deposit for the use and benefit of the depositors all sums of money offered for that purpose; to invest the same in certain modes specially pointed out in the fourth section of the act (p. 4) with power also to make by-laws; to conduct their business by officers to be elected and appointed as pointed out, &c., &c; and requiring the said corporation to file a bond, with security, with the clerk of the Supreme Court of the District (of Columbia), to be approved by one of the judges of said court to the United States, in the penal sum of two hundred thousand dollars, with a condition to pay, and to satisfy every depositor, or person entitled, for such sum as the party may be entitled to, thirty days after such deposit shall be demanded, and which bond may be sued by any depositor or person entitled after such demand and refusal to pay; Congress reserving the right to repeal, alter,

and amend the charter, without limitation as to the duration of the charter.

That said corporation was duly organized and went into operation shortly after the passage of the act of incorporation; appointed all officers required under the charter; each member contributed his quota of the cost necessary to put it into action; and they received large deposits, on which they made large profits, up to the death of said Wm. S. Huntington, which occurred in the month of —— 1877 that neither said Wm. S. Huntington in his lifetime nor the said plaintiffs since his death has ever received more than about three thousand dollars of dividends or profits of said bank; that it has refused to recognize their rights; that they have been advised, believe, and charge that the other corporators have received large dividends; that they have given out and pretend that upon the death of said William S. Huntington all the rights in said business and franchises survive to the other corporators, and that as expressive of their views, and to injure plaintiffs, long since the death of said William S. Huntington, the said defendants have published a by-law (p. 9), by which it is declared and enacted "that upon the death of any member his successor, if any, is to be chosen by the surviving members," and "on the termination of any member's connection with the company his share of the property and profits of the company shall be paid over to the parties lawfully entitled to receive the same," and the complainant is advised that the right which the defendants claim is inadmissible in equity; that the securities on the bond are sureties for the corporation and not for each other; that the liability of one and all continues until a new bond is demanded and given as required by law, &c., &c; and if the association is to be treated as a commercial partnership it would give to each member a right to dissolve it, and it would be *ipso facto* dissolved by the death of any member; and if that is the legal state of the case, the plaintiffs say they demand that the partnership be wound up and a division of the assets be made. The de-

fendants appeared and answered, admitting the material averments of fact in the bill, except as to the amount of profits, and set up the by-law referred to in the bill and that it was passed after the death of Huntington; and further aver that Huntington's administrator was paid his portion of all the profits which had been made up to his death, and that the estate of Huntington is insolvent.

To this there was a general replication. No proof was taken and the case was heard on the bill, answer, and replication.

This brings to the consideration of the court a single question, to wit; Under the said charter, what were the rights of the respective corporators? For although they, after the death of Huntington, undertook to pass and did enact a by-law, which seems in part to settle that question, it is not supposed it will be contended in this court that that by-law did, or could in any manner affect the rights of Huntington as they existed at his death.

The court below dismissed the bill. We have no record or memorandum of the grounds of this dismissal, if any opinion was given.

The appellants will maintain here that there was error in that decree, because they say—

1. By the provisions of the charter, the company had a capital of two hundred thousand dollars as security for the repayment of the deposits with interest. Capital is the security for the payment of the debts of a corporation, in whatever form it may be, whether in cash, or property, or bonds, or notes. It is the fund on which calls may be made upon the stockholders and dividends are to be paid.

1 Sandf., ch. 280; 4 Zab., 195;
Ang. & Ellw. on Corp., §§ 157, 556;
28 Barb., 310; 8 Geo., 486; 3 Wallace, 395.

(a) It was immaterial whether that capital was money or money invested in real estate, or bonds and mortgages, or bonds of the United States, or bonds of the individual corporators with or without security, so long as the security

was satisfactory to and approved by the Supreme Court of the District.

(*b*) The bond given by Huntington was to continue until it should be replaced by some other bond satisfactory to the said court, and was consequently binding on his estate.

(*c*) It results that so long as that bond continued to form part of that capital, his estate is entitled to participate *pro rata* in the profits resulting from the use of that capital, as it would be bound for the losses.

2. The by-law passed after the death of Huntington could have no effect on his rights.

(*a*) No power was given in the charter to make any by-law which would forfeit the interests in the company held by any member, so long as that member's bond formed part of the capital stock.

(*b*) The representatives of Huntington had no notice, and are not charged with any notice of a meeting at which such by-law was passed.

3. If the analogy of a partnership is to be followed, there was no dissolution of the partnership by the death of Huntington, for his partnership was in an incorporeal body, to the existence of which there was no limit except the will of Congress.

(*a*) But if the analogy is pursued, so long as the capital of the deceased party is used and employed by the survivors, they must account with the representatives of the deceased partner for all profits.

See Collyer on Part., 4th Am. Ed., Book 2, ch. 1, §§ 129, 130, 131; Story on Part., § 343 and notes; Carey on Part., 290, 291.

4. It follows from these premises that the complainant is entitled to an audit of the accounts of the defendants and to a decree for such sum as shall appear to be due to her on such audit; and the court erred in dismissing the bill; or,

5. The complainant is entitled to a decree to wind up the business of the defendants, and for her proportion of the profits if profits have been made.

JOS. H. BRADLEY.

Sol for Appellants

Supreme Court of the U. S.

NO. 241.

W. S. HUNTINGTON'S ADMINISTRATORS
vs.
THE NATIONAL SAVINGS BANK OF THE DISTRICT OF COLUMBIA.

Brief of Counsel for Appellee.

WALTER S. COX,
of Counsel for Appellee.

R. O. Polkinhorn, Printer, Washington, D. C.

Supreme Court of the U. S.

NO. 241.

W. S. HUNTINGTON'S ADMINISTRATORS
vs.
THE NATIONAL SAVINGS BANK OF THE DISTRICT OF COLUMBIA.

Brief of Counsel for Appellee.

This is a bill filed by the administrators of a deceased member of a corporation, against the corporation, for an account and distribution of profits.

A by-law of the company provides that, upon the death of any member, his successor, if any, is to be chosen by the surviving members.

The defendant is willing to account for all profits received in the lifetime of the deceased, but denies the right of his representatives to any account of profits received after his death. It does, in fact, in response to the bill, show, that the business, during the lifetime of Huntington, resulted in loss, instead of profit, and that his estate is indebted to it for a share of that loss.

No testimony has been taken to contradict the responsive averments of the answer; and the only question presented by the record relates to the liability of the corporation to, the estate of Huntington, for a share of any profits that may have been realized, since his death.

The charter is an anomalous one. It does not provide for the creation of any capital stock, or the subscription of any capital by the corporators. In point of fact, no capital was so contributed. The whole business consisted of receiving deposits, or, in other words, borrowing money, at one rate of interest, and loaning it at a higher rate, the difference, less expenses, constituting the profit of the concern.

What is there to distinguish this institution from a partnership? The corporators have a joint interest in the business as partners have. They contribute nothing to it but their personal credit, experience and business skill. It is a partnership in the profits of joint labor, without capital. The law does not authorize one corporator to transfer his interest to a stranger by a transfer of stock. It would be very absurd that it should, for it is evident that the personal confidence of the corporators, in each other, is of the essence of the arrangement.

It is apparent that such was the understanding of the corporators themselves, when they executed the bond, for they would scarcely have done so if it had been supposed that the personnel of the body could be changed at the pleasure of the individual corporators.

When one corporators dies, what interest in the concern does he leave behind him? If he had contributed capital, his representatives might call for an account and payment of it. But since he contributes nothing but his personal credit and business skill, by his death alone everything which he contributes is withdrawn, just as in any similar case of admitted partnership. He is entitled to his share of what may have been accumulated, presumptively, with his aid, but what consideration is there from him or his estate for a share in the profits earned exclusively by the labor of the survivors after his death, and to which neither his personal exertions nor his estate have contributed anything?

In fact, he simply dies out of a partnership.

The only features which distinguish this from a pure partnership are, the faculty of acting together as an unit, whatever change of membership may take place, the absence of individual responsibility, the power of making by-laws, the obligation of being governed by a select body, and sundry obligations and limitations imposed in the interest of the depositors. It is essentially a limited partnership.

If the terms "successors and assigns" are supposed to have any significance, it may be said that, as in any other partnership, successors and assigns may be admitted by consent of the body, but it does not follow that one may assign, at pleasure, to a stranger, or that personal representatives may substitute their own, for the personal skill and credit of the deceased, in the conduct of the business.

If the theory of this bill is true, a corporator who merely united in the organization and died the next day, without having paid a dollar or given a day's work, would leave to his family a perpetual share in the fruits of other persons' labors.

It has been claimed that this company has a franchise which may be of great value, and that the deceased had an interest or share in that franchise which is *property*, capable of being sold as part of his estate.

It is denied, on the part of the defense, that there is any such thing as individual property of the corporators in the corporate franchise.

The franchise is simply a privilege of *joint action* in a certain way. It necessarily belongs only to the whole corporate body. It is not susceptible of being parcelled out into shares.

The question is quite different as to property produced by the exercise of the franchise. But the franchise itself is the undivided and indivisible property of the corpora-

tion, incapable of being transferred by act of the party or act of the law.

It is true that the individual corporator may be also said to have a franchise, which is the privilege of being a member of the corporation, of which he cannot be deprived by disfranchisement, without just cause. But this is purely personal to himself, incapable of being transferred, and dying with him.

If the corporation acquires property while he is thus a member, he has an undivided interest in that. If he has himself contributed capital, he has an interest in its profits. If his interest is represented by shares of capital stock, he may both assign and transmit it.

But it is a general principle that no shares in any joint enterprise are transferable, so as to introduce the assignee into the association, unless in the case of joint stock companies and corporations formed in pursuance of legislative authority. And in the case of legislative incorporation, the shares are transferable only under the charter and according to its terms.

Duncuft vs. *Albrow*, 5 Bing., 248.

What is the nature of the alleged franchise in this case? It is not a franchise to own capital and employ it in business, with the privilege of assigning and transmitting, but a franchise to do personal acts, viz: receive on deposit and re-invest moneys for the benefit of depositors. This franchise, by its very nature, then, is extinct as to any individual corporator from the moment of his death, because he is no longer capable of exercising it.

It is argued that the bond signed by the individual corporators as sureties, constitutes the capital of the concern.

But first, the charter did not require or authorize the corporators to execute such a bond. It simply required the corporation to file a bond with satisfactory security, and these corporators were offered as the security. This was no part of their duty in connection with this incorporation, but was simply accidental. Any stranger might as well have been the security, as the bill admits. The corporator, then, as a surety, stands in the same situation that a stranger would occupy, and it is clear that the latter would acquire no interest in the corporation by becoming surety in its bond. Besides, the bond is in no sense the property of the corporation. It is given to the United States to secure the depositors. The corporation cannot sue it or call on the securities, in their proper character, much less as corporators, to pay anything in the way of call or otherwise. Any depositor injured by the corporation may sue the bond, and the only demand which any surety may make upon the others would be for contribution for payments he might be compelled to make. It is inconceivable how this bond could be treated as the capital of the corporation, when the latter has no interest in it except as obligor.

Again, if profits are to be divided, among whom is such division to be made? Clearly, among the corporators alone. Huntington's administrators could only claim a share in such division of profits earned after his death, *as corporators*, by succession to him. But they have never claimed to be such. They have never attended meetings, voted, contributed their personal labor, skill or credit to the business. Moreover, the law of administration would not have permitted them to keep open the estate, subject to assessments, contribution, &c., for such purpose. They are claiming to have a share in profits made by the corpora-

tion, without being members of it or assuming the duties and risks of such membership. There is, clearly, no consideration emanating from them, on which to found such a pretension.

If these views be correct, the by-law complained of only expresses the legal rights of the parties.

II.

The by-law in question is a legitimate exercise of the power to make by-laws. It is one necessary to carry out the objects of the corporation.

An administrator of a deceased corporator has no right, by law, to become a corporator. It might be very objectionable that he should.

This corporation is under a large bond to secure the depositors. It so happens, also, that the individual corporators signed the bond as sureties, though that was not a matter of obligation. But they are vitally interested, each in having the other corporators consist of reliable persons. There would be no security for this if strangers could be thrust upon them by act of law or of the parties.

It is therefore reasonable and consonant to the object of the enterprise that on the death of any member, survivors should have the right to select his successor to associate with them in the future conduct of their business.

Corporations have the right to pass by-laws even disfranchising members which do not deprive them of vested rights of property, when reasonable and necessary to the objects of the corporation.

Angell & Ames on Corporations, Sec. 411, and cases.

III.

But even assuming that complainants have any rights in the premises, have they not mistaken their remedy?

The by-law complained of disfranchises them, if they were entitled to be corporators.

They are ousted and expelled *de facto;* they are not corporators. They have not exercised any of the powers or performed any of the duties of such.

Their remedy is at law, to be restored and admitted as corporators.

Angell and Ames on Corporations, sec. 704.

WALTER S. COX,

of Counsel for Appellee.